

**Walco International, Inc. d/b/a Holt Products Company and United Steelworkers of America, AFL-CIO-CLC.** Case 30-CA-16488-1

August 21, 2003

**DECISION AND ORDER**

BY MEMBERS LIEBMAN, SCHAUUMBER, AND ACOSTA

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on June 2, 2003, the General Counsel issued the complaint on June 20, 2003, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 30-RC-6481. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On July 22, 2003, the General Counsel filed a Motion for Summary Judgment. On July 24, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On August 15, 2003, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer and response, the Respondent contests the validity of the Union's certification in the underlying representation proceeding on the ground that the Board improperly overruled Respondent's objections to the election in that proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).<sup>1</sup>

<sup>1</sup> Members Schaumber and Acosta did not participate in the Board's November 7, 2002 Order adopting, in the absence of timely-filed exceptions, the Acting Regional Director's October 18, 2002 Report and Recommendation on Objections, which recommended that two of the

We also find that the Respondent has not raised any issues warranting a hearing with respect to its alleged refusal to bargain. The Respondent's answer admits that the Union requested bargaining. Although the Respondent's answer denies that Respondent refused to do so, nowhere in its answer or response to the Notice to Show Cause does the Respondent contend that it has agreed to meet and bargain with the Union. Nor does the Respondent's response to the Notice to Show Cause otherwise dispute the General Counsel's assertion in his motion that Respondent is refusing to bargain. On the contrary, the response acknowledges that "bargaining did not take place." Response at 2. Further, as indicated above, the Respondent contends that the Union was improperly certified as the bargaining representative of the unit employees. In these circumstances, we find that Respondent is refusing to bargain in order to contest the Union's certification, as alleged. See *VIP Health Services*, 324 NLRB No. 54, slip op. at 2 fn. 5 (1997) (not reported in Board volumes), *enfd.* 164 F.3d 644 (D.C. Cir. 1999).

Accordingly, we grant the Motion for Summary Judgment.<sup>2</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation, with an office and place of business in Madison, Wisconsin, is engaged in the business of distributing agricultural, medical, and livestock supplies.

During the past calendar year ending December 31, 2002, the Respondent purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Wisconsin.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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Respondent's objections be overruled without a hearing. However, they participated in the Board's March 20, 2003 Decision and Certification of Representative, which adopted the hearing officer's findings and recommendations to overrule the Respondent's remaining objections, and certified the Union as representative. They agree that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decision in the representation proceeding, and that summary judgment is appropriate for the reasons indicated herein.

<sup>2</sup> We therefore deny the Respondent's request that the complaint be dismissed and that it be awarded its costs and fees.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

Following the election held September 19, 2002, the Union was certified on March 20, 2003, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Madison, Wisconsin location; excluding managerial employees, clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. *Refusal to Bargain*

By a letters dated March 26 and May 12, 2003, the Union requested the Respondent to meet and bargain, and, since on or about March 26, 2003, the Respondent has failed and refused to do so. We find that the Respondent has thereby unlawfully refused to bargain in violation of Section 8(a)(5) and (1) of the Act.

### CONCLUSION OF LAW

By failing and refusing on and after March 26, 2003, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

### ORDER

The National Labor Relations Board orders that the Respondent, Walco International, Inc. d/b/a Holt Prod-

ucts Company, Madison, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL-CIO-CLC as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Madison, Wisconsin location; excluding managerial employees, clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Madison, Wisconsin, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 26, 2003.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL-CIO-CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time production and maintenance employees employed by us at our Madison, Wisconsin location; excluding managerial employees, clerical employees, guards and supervisors as defined in the Act.

WALCO INTERNATIONAL, INC. D/B/A HOLT  
PRODUCTS